IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4677 OF 2005

Shri Kaleshwar Deo ..Petitioner.

Versus

The State of Maharashtra & Anr. ..Respondents.

Mr. S.S. Patwardhan for the Petitioner.

Mrs. V. Mhaispurkar, AGP for the Respondents.

CORAM : S. A. BOB DE, J.

DATED : 26TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

Mrs. Mhaispurkar, learned AGP waives service of rule for respondents.

Heard by consent.

2. The petitioner has challenged the refusal of permission by the Joint Charity Commissioner, Kolhapur Region, Kolhapur under section 36(1)(a) of the Bombay Public Trust Act, 1950.

3. The Trust applied to the Charity Commissioner for permission to sell its agricultural land, admeasuring approximately 4 hecter. The petitioner expressed his intention to sell the land because of the possibility of encroachment and the land coming under some reservation. The petitioner further states that the income from that land would be invested in a Nationalized Bank, which would fetch income to the Trust and that income would be more than the income, the trust is getting presently from the agricultural land. This application has been rejected on the ground that the trust is not entitled to sell the property and invest the proceeds therefrom. The learned Joint Charity Commissioner, has rejected the application on the ground that there is no compelling necessity for the alienation as such so as to make the payment of antecedent debt, protection of property from deterioration and so on.

4. The question of payment of antecedednt debt appears to be quite irrelevant to the matter. As regards the protection of the property and its deterioration, it is clear that one of the reason why the permission was sought by the petitioner was that there is danger of enchrochment and possibility of

reservation. The observations of the learned Joint Charity Commissioner are not sustainable and suffer from gross non-applicatoin of mind. The order is, therefore, set aside. The learned Joint Charity Commissioner is directed to reconsider the petitioner's application on merit, after taking into account all the material produced by the petitioner. The Joint Charity Commissioner is requested to decide the matter as expeditiously as possible and, in any case, not later than three months from the date the parties appear before him. The parties are directed to appear before the learned Joint Charity Commissioner on 5th Sept., 2005.

5. Rule is disposed of in the above terms.

DT.26.08.05 (S.A.BOBDE,J)

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